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| APPLICATION NO.        | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------|-------------|----------------------|---------------------|------------------|
| 10/622,400             | 07/18/2003  | Lewis Conrad Keller  | CFLAY.00212         | 4684             |
| 22858                  | 7590        | 12/21/2006           |                     |                  |
| CARSTENS & CAHOON, LLP |             |                      | EXAMINER            |                  |
| P O BOX 802334         |             |                      | BECKER, DREW E      |                  |
| DALLAS, TX 75380       |             |                      |                     |                  |
|                        |             |                      | ART UNIT            | PAPER NUMBER     |
|                        |             |                      | 1761                |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 12/21/2006 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/622,400

Applicant(s)

KELLER ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-12 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12, 14-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 19-23 have been renumbered 20-24.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-12, 14-16, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller [Pat. No. 4,869,911] in view of Weinstein et al [Pat. No. 5,639,485] and Parsons et al [Pat. No. 6,509,049].

Keller teaches a method comprising the steps of plasticizing a farinaceous food mixture containing 5-17% plasticizer (column 2, line 22) including monosaccharides, polysaccharides, and alcohols (column 3, lines 12-51), a moisture content of 9-17% (column 2, line 25), directing the flow to a central passage of a co-rotating twin screw extruder (column 4, lines 8-17), extruding the flow through a nozzle (column 4, line 51),

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the product having a moisture content of 4-8% and water activity level of 0.30-0.45 (column 2, line 35), the plasticizer including 4-6% corn syrup solids, 0.5-2.0% sucrose, 3-6% polydextrose, and 0.5-2.5% glycerol (column 3, lines 53-59), 6-15% plasticizer (column 4, line 1), corn meal (column 3, line 3), and a reduction in cross-sectional area of about 9.2:1 (column 4, lines 51-63). Keller does not recite injecting a continuous band of fluid additive, a die insert with a capillary channel and peripheral reservoir manifold, a fluid supply port and fluid additive source, and a static mixer. Weinstein et al teach a method of extruding complex patterns by using a die insert (Figure 2, #20), injecting a fluid additive into the cleft (Figure 4, #48), capillary channels (Figure 3, #52, 54, 56), a peripheral reservoir (Figure 4, #58), and a fluid supply port and source (Figure 2, #18). It would have been obvious to one of ordinary skill in the art to incorporate the fluid injection means of Weinstein et al into the invention of Keller since both are directed to methods of extruding farinaceous materials, since Keller already included the concept of co-extrusion (column 5, lines 17-35), and since the fluid injection means of Weinstein et al provided an effective means for providing multi-colored food product with complex patterns which were valued by consumers (column 1, lines 5-34). Parsons et al teach a food extruder including static mixer elements (Figure 1, #46), injecting a continuous band of fluid (Figure 7, #86, 88, 90, 92), and multiple segregated areas of different colors (Figure 4). It would have been obvious to one of ordinary skill in the art to incorporate the features of Parsons et al into the invention of Keller, in view of Weinstein et al, since all are directed to methods of extruding foods, since Weinstein et al was directed to making complex patterns in the extruded product with plural materials,

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changing the size and shape of the ports, and further mixing (column 6, lines 43-56), since the static mixer elements of Parsons et al would have provided a means for making a swirled or marbled effect (column 7, line 13), and since the continuous bands emerging from the slots (Figure 7, #86, 88, 90, 92) of Parsons et al provided a more uniform layer of fluid as compared to individual holes.

4. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller, in view of Weinstein et al and Parsons et al, as applied above, and further in view of Smeaton [Pat. No. 6,170,979].

Keller, Weinstein et al, and Parsons et al teach the above mentioned concepts. Keller, Weinstein et al, and Parsons et al do not recite segregated quadrants with separate fluid supply ports and sources. Smeaton teaches a method for fluid injection comprising segregated quadrants with separate fluid supply ports and sources (Figure 2, #12-13). It would have been obvious to one of ordinary skill in the art to incorporate the segregated quadrants of Smeaton into the invention of Keller, in view of Weinstein et al and Parsons et al, since all are directed to methods of preparing food, since Weinstein et al already included multiple additives and changing the size and shape of the insert (column 6, lines 43-56), since Parsons et al already included plural supply lines (Figure 4), and since the segregated quadrants of Smeaton provided greater flexibility in the type and shape of the resulting extrudate.

### ***Response to Arguments***

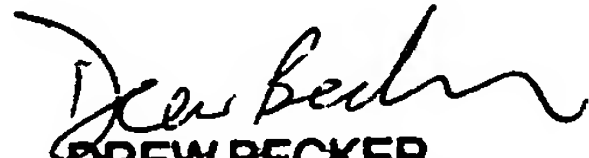
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5. Applicant's arguments with respect to claims 2-12 and 14-24 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DREW BECKER  
PRIMARY EXAMINER

12/19/06